

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Examine
Electric Utility De-Energization of Power
Lines in Dangerous Conditions.

Rulemaking 18-12-005

OPENING BRIEF OF THE PUBLIC ADVOCATES OFFICE

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I. INTRODUCTION

Pursuant to Rule 13.11 of the Commission’s Rules of Practices and Procedure and the Assigned Commissioner’s and Administrative Law Judge’s Ruling Regarding Procedural Schedule, issued on September 21, 2020, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this Opening Brief in the above captioned proceeding. The Opening Brief addresses the Assigned Commissioner’s and Administrative Law Judge’s Ruling Directing Pacific Gas and Electric Company (PG&E) to show cause why it should not be sanctioned by the Commission¹ for violations of Public Utilities Code Section 451, Commission Decision 19-05-042² and Resolution ESRB-8.³

The Commission issued the order to show cause (OSC) on November 12, 2019 directing PG&E to show cause why it should not be sanctioned for failing to properly communicate with its customers, coordinate with local governments, and communicate

¹ Hereinafter, “OSC”.

² Decision Adopting De-Energization (Public Safety Power Shut-Off) Guidelines (Phase 1 Guidelines)

³ Resolution Extending De-Energization Reasonableness, Notification, Mitigation and Reporting Requirements in Decision 12-04-024 to all Electric Investor Owned Utilities.

with Critical Facilities and Public Safety Partners⁴ during the Public Safety Power Shutoff (PSPS) events of October 9-12, 2019 and October 23–November 1, 2019.⁵ The OSC found that these events resulted in public safety risks to customers.⁶

The Assigned Commissioner’s and ALJ’s E-Mail Ruling of September 21, 2020 determined that hearings were no longer necessary⁷, directed parties to file motions to move exhibits into the record by October 13, 2020, and to file opening briefs on October 30, 2020.

Cal Advocates submits this opening brief and recommends that the Commission direct PG&E to pay penalties and remedies financial amends in the sum of \$165,742,000 pursuant to Public Utilities Code §§ 2107 and 2108. The record in this proceeding will show that PG&E committed offenses punishable under these provisions by an amount that far exceeds this recommendation. However, Cal Advocates has determined that this sum is reasonable based on the following findings and violations:

- For failure to inform Public Safety Partners \$ 15,300,000
- For failure to inform Medical Baseline Customers \$101,290,000
- For repeated failures to inform Customers, previously not notified \$ 7,639,000
- For failures associated with PG&E’s unavailable website \$ 41,513,000

⁴ D.19-05-042 defined Public Safety Partners at Appendix C, p. 6 as “First responders at the local, state and federal level, water and communication providers, CCAs [Community Choice Aggregators], affected POUs [Publicly Owned Utilities]/electrical cooperatives, the Commission, CalOES [California Governor’s Office of Emergency Services] and CAL FIRE [California Department of Forestry and Fire Protection].”

⁵ Assigned Commissioner and Assigned Administrative Law Judge’s Ruling directing Pacific Gas and Electric Company to show cause why it should not be sanctioned by the Commission for violation of Public Utilities Code Section 451, Commission Decision 19-05-042 and Resolution ESRB-8, hereinafter “OSC.”

⁶ *Id.*, pp. 1, 3.

⁷ On December 23, 2019, the Commission’s Scoping Ruling stated: “Evidentiary Hearings are needed”. See Assigned Commissioner and Assigned Administrative Law Judge’s Ruling Setting the Scope And Schedule of the Order to Show Cause Against Pacific Gas And Electric Company for Violations Related to the Implementation of the Public Safety Power Shutoffs in October 2019 , p.5.

II. LEGAL BACKGROUND AND AUTHORITY

Public Utilities Code § 451 provides:

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

The Commission first addressed the PSPS guidelines in part as a surrogate for the Investor Owned Utilities' (IOU) failure to timely and adequately maintain the multitude of poles and power lines necessary to maintain the safety, health, comfort and convenience of the customers in their service areas.⁸ Thus, from the first application a utility filed seeking Power Shut Off authority, A.08-12-021,⁹ the Commission made it clear that its regulations or guidelines are not a substitute for the Public Utilities Code §451 standard on what utilities must do to protect public safety.¹⁰

In A.08-12-021 San Diego Gas & Electric Company (SDG&E) requested the authority to institute a PSPS action, which it referred to as a Power Shut-Off Plan.¹¹ One of SDG&E's concerns was that the wood poles that comprise most of the power lines in its service area, largely installed in the 1950s and not replaced since, could fail during Santa Ana winds and spark wildfires.¹² Thus, under its proposed Power Shut-Off Plan,

⁸ D. 09-09-030, Decision Denying Without Prejudice San Diego Gas & Electric Company's Application to Shut Off Power During Periods of High Fire Danger. Hereinafter (D.09-09-030)

⁹ Application of San Diego Gas and Electricity Company for Review of its Proactive De-Energization Measures and Approval of Proposed Tariff Revisions (U902E), Filed December 22, 2008.

¹⁰ See, generally, Decision (D.)12-04-024, Decision Adopting Petition to Modify D.09-09-030 and Adopting Fire Safety Standards for San Diego Gas & Electric Company.

¹¹ Southern California Edison Company participated in the proceeding and supported SDG&E's Application. See Decision (D.) 09-09-030, pp. 6, 9.

¹² See D.09-09-030 at p. 55, stating that "SDG&E's Power Shut-Off Plan is not limited to emergency conditions, but applies to situations that occur annually (e.g., sustained winds of 35 mph). SDG&E is

(continued on next page)

SDG&E would turn off electricity to certain regions during periods of high fire danger to prevent overhead power lines from igniting catastrophic fires. Further, SDG&E requested authority to revise its Electric Tariff Rule 14, which provides that SDG&E would not be liable to its customers for interruptions of service resulting from “inevitable accident, act of God, fire, strikes, riots, war or any other cause not within its control.”¹³ The proposed revision would add language stating that SDG&E would not be liable for any interruption of service during a Power Shut Off under SDG&E’s plan.¹⁴

Thus, SDG&E sought regulatory authority for the PSPS events that would absolve them from liability for any costs or adverse impacts that customers may experience during a PSPS event. In fact, prior to bringing its Application for a Power Shut Off Plan, “SDG&E proactively de-energized power lines as a preventive measure against Santa Ana winds” ¹⁵ during the 2007 wildfire season, without Commission guidelines or pre-authorization. Similarly, in 2003, SCE implemented a power shut off program after the Governor declared a state of emergency because large numbers of dead trees killed by bark beetles posed a fire risk.¹⁶

...SCE implemented its power shut-off program in 2003 on its own initiative and obtained Commission authorization sometime later. SCE terminated the program in August 2005, after the dead and diseased trees had been cleared from the region.¹⁷

required by General Order 95 to design, construct, and maintain its power-line facilities to operate safely under these regularly occurring conditions.” Santa Ana winds are typically called Diablo winds in Northern California.

¹³ D. 09-09-030, p.3.

¹⁴ “SDG&E seeks to revise Tariff Rule 14 to explicitly State that SDG&E will not be liable for any costs or adverse impacts that customers experience due to the Power Shut Off Plant.” D.09-09-030, p.3.

¹⁵ See <https://www.cpuc.ca.gov/deenergization>

¹⁶ “The purpose of SCE’s power shut-off program was to protect against the possibility of strong winds causing dead trees to fall onto its power lines and igniting a wildfire.” D.09-09-030, p.40.

¹⁷ D.09-09-030, pp. 40-41.

Thereafter, in D.09-09-030 the Commission established that California IOUs had the requisite “authority under §451 and §399.2(a) to shut off power in emergency situations when necessary to protect public safety”¹⁸ without further Commission directive. This statutory foundation remains the legal standard for the Commission’s current PSPS guidelines pursuant to which PG&E initiated the 2019 PSPS events subject to the OSC.¹⁹

In D.12-04-024, the Commission again reaffirmed that the legal basis for a power shut off event is Public Utilities Code §451.

We affirm our holding in D.09-09-030 that SDG&E’s statutory obligation to operate its system safely requires SDG&E to shut off its system if doing so is necessary to protect public safety. We also affirm our determination in D.09-09-030 that SDG&E may need to shut off power to protect public safety if strong Santa Ana winds threaten to topple power lines onto tinder dry brush.²⁰

However, the Commission noted that its regulations, such as its General Orders and the new notification rules set forth in D.12-04-024, embody the minimum factual requirements that utilities must satisfy to be in compliance with Public Utilities Code §451. Specifically, D.12-04-024 modified D.09-09-030 to provide that SDG&E may remain liable for power interruptions that are initiated at windspeed conditions below the requirements set forth in General Order (GO) 95, and to require that SDG&E “provide as much notice as feasible before shutting off power” so that affected customers, especially essential service providers and those on medical life support systems, may implement alternative plans.²¹

¹⁸ D.09-09-030, p. 61.

¹⁹ See D.09-09-030.

²⁰ D.12-04-024, p. 25.

²¹ *Id.*, p. 10. See also D.19-05-041, p.8, stating: “Since the adoption of D.12-04-024, Pacific Gas and

(continued on next page)

GO 95's windspeed requirements establish the minimum standard the utilities must meet to prevent pole failures under Public Utilities Code §451. By the same token, the Commission's PSPS guidelines established in D.19-05-042²² and Resolution ESRB-8 are the minimum standards the utilities must meet for public safety during PSPS under Public Utilities Code §451. The Commission's PSPS guidelines constitute the minimum requirements that PG&E must meet to be in compliance with its statutory obligation under Public Utilities Code §451. PG&E has failed to meet this minimum standard.

Resolution ESRB-8 adopted the rules the Commission set forth for SDG&E in D.12-04-024 and made them applicable to all of California's electric IOUs.²³ These rules, which include reasonableness, public notification, mitigation and reporting requirements became the first PSPS guidelines. "Resolution ESRB-8 goes a step beyond D.12-04-024 by strengthening the reporting and public outreach, notification and mitigation guidelines adopted in 2012."²⁴ For instance, Resolution ESRB-8 directs the electric IOUs to submit a report to the Director of Safety and Enforcement Division at the Commission within 10

Electric Company (PG&E) and Southern California Edison Company (SCE) have exercised their authority to de-energize power lines pursuant to §§ 451 and 399.2(a), but these electric utilities were not subject to the reasonableness, notification, mitigation and reporting requirements ordered in D.12-04-024 for SDG&E."

²² D.19-05-042 again reaffirmed the statutory foundation for the PSPS, stating at p. 7:

"D.12-04-024 reaffirms the Commission's finding in D.09-09-030 that SDG&E has authority under §§ 451 and 399.2(a) to shut off power in order to protect public safety when strong winds exceed the design basis for SDG&E's system.¹⁴ D.12-04-024 goes a step beyond the 2009 decision, by ordering SDG&E to (1) take all appropriate and feasible steps to provide notice and mitigation to its customers whenever the utility shuts off power pursuant to §§ 451 and 399.2(a), and (2) reporting any de-energization events to the Commission's Safety and Enforcement Division (SED) within 12 hours after SDG&E shuts off power."

²³ D.19-05-042, pp. 8-9.

²⁴ D.19-05-024, p. 9.

business days after a de-energization event and after high-threat events that did not require de-energization but necessitated giving the requisite notice.²⁵

Finally, the Commission opened Rulemaking (R.) 18-12-005 to examine ways in which de-energization can best be implemented with effective planning, to develop best practices for evaluating de-energization programs, and ensure that the utilities mitigate the impact of de-energization on vulnerable populations, while ensuring that essential service providers have all the information they need to coordinate and align their systems for managing emergencies.

In all, from A.08-12-021 to R.18-12-005, more than a decade of studies, examinations, expert and stakeholder consultations, modeling, discoveries, workshops and Commission proceedings, preceded and informed PG&E's 2019 PSPS events. Notwithstanding, this decade of learning and effort, PG&E's October 9 -12, 2019 and October 23, 2019 and November 1, 2019 PSPS events were a major public safety failure. PG&E put the lives of many vulnerable customers at risk, and either failed in or disregarded, its obligations to public safety partners, local agencies, and essential service workers.

PG&E must be held accountable to do better, and PG&E must admit its failings before it can do so. PG&E refuses to do so. Rather, PG&E maintains that (1) the facts alleged in the OSC do not constitute violations that are subject to sanctions, (2) that the allegations in the OSC are not supported by facts available to PG&E, and (3) that the allegations while factually correct do not constitute the violations stated in the OSC.²⁶

While PG&E has publicly acknowledged its shortcomings when it serves its financial interests, PG&E's recalcitrant response to this OSC shows that the company is

²⁵ Resolution Extending De-Energization Reasonableness, Notification, Mitigation and Reporting Requirements In Decision 12-04-024 To All Electric Investor Owned Utilities, pp.3-5.

²⁶ See Concurrent Rebuttal Testimony of Public Advocates Office, p.4

more interested in an effective public relations campaign than providing for the safety of its customers.²⁷ PG&E actions speak louder than its words. Less than one week after the PSPS Emergency Meeting before President Batjer and the Commissioners, PG&E initiated three PSPS events that together exceeded the event for which the Company was made to appear before the Commission at the Emergency PSPS Meeting.²⁸ While PG&E's public relations claims are at odds with the legal claims it makes in this proceeding,²⁹ the facts show that PG&E's behavior has caused significant disruption to people's lives, with such anxiety that customers are forced to bear unnecessary costs (such as for purchasing home generators to avoid power outages that they cannot plan for)³⁰ and, if left unchecked, PG&E's PSPS failures will result in loss of life.

The Commission must impose adequate penalties and financial remedies to incent PG&E to act reasonably to mitigate the impact of its PSPS events and take the necessary steps to ensure that it does not unreasonably place customers' lives and wherewithal at risk.

²⁷ Reporter's Transcript ("RT") of October 18, 2019 Emergency Meeting on PG&E's Planning and Execution of the Public Safety Power Shut-Off Events in Northern California. See generally, RT, pp 47 – 130; specifically, Testimony of Kathleen Kay, p.54: "To start, we understand and recognize the significant impact that this event had on our customers and communities. We also recognize that in many ways we fell short of what our local government partners expected of us and frankly what we expected of ourselves. And those shortcomings resulted in considerable frustration. We have to do better and we are taking steps to be better. To that end, PG&E leadership held two hot-wash conference calls with counties impacted by the recent PSPS events on Wednesday. The focus was on quick wins or things we can do immediately to improve collaboration during a PSPS event."

²⁸ OSC, p.4.

²⁹ Pacific Gas and Electric Company Public Safety Power Shutoff Event Order to Show Cause, Opening Testimony, p.1-6, stating: "PG&E undertook significant efforts to prepare for the PSPS events in October through November of 2019 and there were many aspects of that preparation in which PG&E excelled."

³⁰ Exh. Cal Advocates – 08. See also, Exh. Cal Advocates-010.

III. THE VIOLATIONS IN THE ORDER TO SHOW CAUSE

A. PG&E Repeatedly Failed to Reasonably Act to Mitigate the Impact of the PSPS events

The Commission issued this OSC on November 11, 2019 after PG&E's repeated failures to act reasonably and follow Commission directives and guidelines when shutting off electricity service to its customers, some of whom require power for life-sustaining machines.

The first of PG&E's failures to follow the PSPS guidelines set forth in D.19-05-042 occurred on October 9, 2019. In that event, PG&E cut service across 35 counties, impacting 729,000 customer accounts without notifying thousands of customers, including 500 medical baseline customers, and failed to coordinate with local governments and tribal communities in its service area.³¹ PG&E's website was unavailable during most of this PSPS event, which lasted four days, from October 9, 2014 to October 12, 2019.³² "This meant that customers and government agencies were unable to obtain information on the outage or other important data."³³ Thus, not only did PG&E fail to provide the required notice set forth in the Commission's guidelines, but also failed to maintain its website to provide the essential information that a predictable number of customers would reasonably need during a power shut-off event.

Following the October 9–12, 2019 PSPS event, President Batjer ordered PG&E to attend an October 18, 2019 emergency Commission meeting to address concerns she expressed in a letter to the company regarding the PSPS event,³⁴ which was then the largest PSPS event in California's history. PG&E attended the meeting and admitted it

³¹ OSC, p.1-2.

³² *Id.*, p. 3.

³³ *Id.*, p. 2.

³⁴ *Id.*, p. 2.

had failed to follow the guidelines in several significant respects. PG&E also assured the Commission that it can and would do better.³⁵

However, on October 23, 2019, PG&E again issued a PSPS event without following the requisite guidelines. PG&E initiated yet another PSPS event on November 1, 2019 without following the requisite guidelines. In addition to failing to provide the notice that just days before it agreed to provide, PG&E again failed to provide advance notification to 28,600 customers out of a total of 941,000 who were shut off from October 26, 2019 to November 1, 2019, and 700 medical baseline customers affected by the event.³⁶

Thus, notwithstanding the Commission's emergency meeting of October 18, 2019, during which PG&E assured the Commission that it could and would do better.³⁷ PG&E immediately repeated the failures of the October 9-12, 2019 PSPS event. Therefore, at issue in this OSC is not whether PG&E failed (the record is replete with evidence that PG&E failed to follow ESRB-8 and D.19-05-042 guidelines) but rather, what steps the Commission should take to incentivize PG&E to act with something more than a public relations campaign, and fix problems that it knows and/or reasonably should have known, exist.

B. PG&E Failed to Justify its De-energizations as Required by the OSC

PG&E is required to issue a report after each de-energization setting forth the events and rationale leading to the de-energizations. "The electric investor owned utilities must deploy de-energization as a measure of last resort and must justify why de-

³⁵ *Id.*, p. 2. Cal Advocates also notes that this is one of a litany of times PG&E has committed, yet again, to doing better after it failed to provide safe and reliable service.

³⁶ *Id.* p.4.

³⁷ OSC, p. 2. Cal Advocates also notes that this is one of a litany of times PG&E has committed, yet again, to doing better after it failed to provide safe and reliable service.

energization was deployed over other possible measures or actions.”³⁸ In spite of these clear and overlapping directives, PG&E has yet to proffer any such explanation. Rather, in the year since the October – November 2019 PSPS events, PG&E has changed some of the information in the reports it submitted to the Commission several times, sometimes to reflect its more egregious failures.³⁹

On February 5, 2020, PG&E submitted its opening testimony as directed by the Assigned Commissioner’s and ALJ’s Scoping Ruling of December 23, 2019. PG&E’s testimony did not refute the allegations in the OSC, but generally tried to minimize or diminish the public safety risks and disruptions the PSPS events caused to local governments, essential service workers, vulnerable medical customers, and the public in general.⁴⁰

PG&E’s opening testimony did not address this “overarching” guideline. There was no discussion of any other possible measures PG&E considered deploying, not just across the 35 counties during the October 9-12, 2019 PSPS event or the 38 counties during the October 23, 2019 and November 1, 2019 PSPS events, but in any single county aside from all the rest. PG&E’s opening testimony did not demonstrate that the level of disruption its PSPS events caused to hundreds of thousands of people in so many counties across Northern California was necessary to protect public safety. The absence of such a showing is a reflection of the degree to which these PSPS events, at least in most of the counties, were arbitrary.

Thus, while whether PG&E cannot or would just rather not explain the reasoning behind its determination to de-energize numerous counties, what is both clear and undeniable, is that PG&E has failed to do so.

³⁸ *Id.*, p. 4, quoting: D.19-05-042, App. A at A-4.

³⁹ Exh. Cal Advocates 24, p. 2, showing PG&E made revisions on January 27, 2020 and June 24, 2020.

⁴⁰ Pacific Gas Electric Company Public Safety Power Shutoff Event Order to Show Cause, Opening Testimony, pp. 1-6.

IV. CAL ADVOCATES RECOMMENDED PENALTIES AND FINES

Cal Advocates recommends that the Commission impose penalties and financial remedies, in the amount of \$165,742,000 against PG&E for violations of Public Utilities Code §451, arising from PG&E's compromise of public health and safety during the 2019 PSPS events. The sum of penalties were derived from the specific violations for each PSPS event that forms the basis of the OSC, as follows:

- For failure to inform Public Safety Partners \$ 15,300,000
- For failure to inform Medical Baseline Customers \$101,290,000
- For repeated failures to inform Customers, previously not notified \$ 7,639,000
- For failures associated with PG&E's unavailable website \$ 41,513,000

Cal Advocates' recommended penalty is necessary to incentivize PG&E to act reasonably to properly inform its customers of an impending PSPS event and to deter PG&E's "least costs to shareholders" approach to public safety.

A utility's decision to shut off power to its customers impacts public health and human safety. The scope of the problem ranges from broad impacts upon critical facilities and Public Safety Partners such as hospitals, fire departments, water facilities, and telecom providers to the economic toll and disruption to the lives of individual residential customers and businesses.⁴¹ The most vulnerable customers are those who rely on electricity to provide life-sustaining treatments or mobility (medical baseline customers). These parents, grandparents, and children include those who have special heating and cooling needs, asthma and/or sleep apnea, CPAP machines, wheelchairs, respirators, iron lungs, and hemodialysis machines.⁴² These Californians are considered so vulnerable to electrical disruption that a utility will often attempt to send employees

⁴¹ Cal Advocates_021-Q02, p. 116.

⁴² See, for example, Cal Advocates_010-Q03, p. 063.

door to door to ensure that they are notified they may lose power.⁴³ When a utility fails to provide these hospitals, fire departments, and people with medical conditions with adequate warning of its decision to execute a PSPS, it is endangering lives.

A. Standard of Proof

The Standard of Proof in a Commission investigative proceeding is the preponderance of the evidence standard.⁴⁴ PG&E has not shown, by a preponderance or any other indicia of evidence why it should not be sanctioned for placing the public at risk during the PSPS events. The preponderance of the evidence shows that PG&E failed to notify, public safety partners, medical baseline customers, and the general public of PSPS.

B. Burden of Proof

PG&E has the burden of proof in this proceeding both in regard to the reasonableness of its managerial decision and because the Commission established a presumption against PSPS events. In D.09-09-030, the Commission stated: “There is a strong presumption that power should remain on for safety reasons.”⁴⁵ Further, D.09-09-030 found statutory authority for this presumption in Public Utilities Code §330(g), which in parts states that “Reliable electric service is of utmost importance to the safety, health, and welfare of the State’s citizenry and economy.”

Thus, in a PSPS event, the utility bears the burden of demonstrating both that the benefits of shutting off power outweigh the significant costs, burdens, and risks the event would impose on customers and communities in the areas where light was shut off, and

⁴³ Cal Advocates_020-Q01, p. 088.

⁴⁴ Modified Presiding Officer’s Decision Regarding Allegations of Violations Regarding Pacific Gas and Electric Company’s Operations and Practices with Respect to Facilities Records for Natural Gas Transmission System Pipeline, p.36; see also, Final Decision [Communications Telesystems International] (1997) 72 CPUC 2d 621, 642.

⁴⁵ D.09-09-030, p. 57.

that its decision to do so took into account the information known and reasonably known to its managers.

These PSPS events disrupted the lives of hundreds of thousands of Californians and caused substantial economic damage.⁴⁶ Yet, PG&E has not provided any logical explanation for why it instituted such sweeping de-energization events without proper notifications, not just to the general public, but also to critical facilities and local governments, medically vulnerable customers. While an essential element of PG&E's public relations campaign, mere claims of 'good intentions' as are replete in PG&E's testimony are neither legally sufficient nor consistent with the facts.⁴⁷ Therefore, the Commission should impose the approximately \$166 million in penalties and financial remedies Cal Advocates has recommended

C. The Record Evidence

The evidentiary record in this proceeding is sufficient to support the Commission imposing these penalties and financial remedies that Cal Advocates recommends against PG&E; the law requires it.⁴⁸

⁴⁶ See Concurrent Rebuttal Testimony of Cal Advocates Office, citing: Comments made by representatives from the County of Sonoma at the November 18, 2019 California Senate Oversight Hearing on Electric Utility Power Shutoffs: Identifying Lessons Learned and Actions to Protect Californians indicated that the County of Sonoma had incurred 4 million dollars of general fund costs directly resulting from the September and October 2019 de-energization events, presenting a significant hardship to the County. See, <https://www.senate.ca.gov/media/senate-energy-utilities-communications-committee-20191118/audio> for the recording of this meeting.

Additionally, estimates made by Michael Wara of the Stanford Woods Institute for the Environment and reported on by CNBC (<https://www.cnbc.com/2019/10/10/pge-power-outage-could-cost-the-california-economy-more-than-2-billion.html>) put the economic cost of the October 9-12, 2019 PG&E de-energization event, at \$2.5 billion in total outage costs, most of which was commercial and industrial losses. The estimate was made using the Interruption Cost Estimate Calculator created by the Lawrence Berkeley National Laboratory and Nexant. See, <https://icecalculator.com/home>

⁴⁷ PG&E's Opening Testimony, pp. 1-3, lines 1-21.

⁴⁸ See Public Utils. Code §§ 451, 2107, 2108.

Table 1 below shows a conservative estimate of the number of times PG&E failed to notify these customers and the amount of penalties and financial remedies Cal Advocates recommends for these failures.

Table 1: Public Advocates Office Proposed Violation Scenario

Violation by Customer Category	Uninformed Customer Count⁴⁹	Violation per Customer	Financial Impact⁵⁰
Public Safety Partners			\$15,300,000
Un-notified Public Safety Partners on <u>October 9 to 12, 2019</u> when PG&E website was unavailable or nonfunctional	49	\$100,000	\$4,900,000
Un-notified Public Safety Partners on <u>October 23 to 25, 2019</u>	6	\$100,000	\$600,000
Un-notified Public Safety Partners on <u>October 26 to November 1, 2019</u>	98	\$100,000	\$9,800,000
Medical Baseline (MBL)			\$101,290,000
Un-notified MBL customers on <u>October 9 to 12, 2019</u> when PG&E website was unavailable or nonfunctional	589	\$70,000	\$41,230,000
Un-notified MBL customers on <u>October 23 to 25, 2019</u>	22	\$65,000	\$1,430,000
Un-notified MBL customers on <u>October 26 to November 1, 2019</u>	902	\$65,000	\$58,630,000
Repeated Uninformed Customers			\$7,639,000
Repeated un-notified customers on any two De-Energization events	11,950	\$500	\$5,975,000
Repeated un-notified customers all three De-Energization events	1,664	\$1,000	\$1,664,000
All Other Customers			\$41,513,000
Un-notified customers on <u>October 9 to 12, 2019</u> when PG&E website was unavailable or nonfunctional	22,773	\$1,000	\$22,773,000
Un-notified customers on <u>October 23 to 25, 2019</u>	1,994	\$500	\$997,000
Un-notified customers on <u>October 26 to November 1, 2019</u>	35,486	\$500	\$17,743,000
Total Financial Impact for All Customer Categories			\$165,742,000

Where the record of this proceeding demonstrates that PG&E violated Public Utilities Code Section 451 and the guidelines in D.19-05-042 and ESRB-8 in the manner reflected in Table 2, and the history of IOU PSPS events shows that PG&E failed to act

⁴⁹ Number of customers not informed in terms of Customer Accounts.

⁵⁰ Uninformed Customer Count times the Violation per Customer amount.

reasonably in both calling and preparing for PSPS events. Either of the aforementioned supports the sanctions recommended therein. Cal Advocates conducted extensive discovery in this proceeding and the customer calculations relied upon in Table 1 were obtained from PG&E.⁵¹ Cal Advocates then identified the number of actionable failures that occurred during the PSPS events, the duration of the actionable failures and how many customers were affected, and then ran scenarios to provide a range of financial remedies. However, in computing the recommended penalties, Cal Advocates used the most conservative estimates of these inputs.

1. Penalty Amount

Public Utilities Code §2107 provides:

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than one hundred thousand dollars (\$100,000), for each offense.

Thus, for the offenses in Table 1, the Commission is required to choose from a range of \$500 to \$100,000 per violation. Cal Advocates followed this range in determining its recommendations. For violations that placed Public Safety Partners at risk during the OSC PSPS events, Cal Advocates recommends the statutory maximum of \$100,000 per PSPS event per Public Safety Partner. This a very conservative calculation because each day of PSPS event per customer constitutes an offense.

Cal Advocates recommends a severe penalty for violations that placed Medical Baseline Customers at risk. For Medical Baseline Customers, Cal Advocates

⁵¹ See For instance, Cal Advocates Exhibits 13 and 26,

recommends \$65,000 to \$70,000 per PSPS event.⁵² For all other customers who were not informed prior to PG&E shutting off their power, Cal Advocates recommends the minimum penalties of between \$500 to \$1,000 per for these customers. Additionally, Cal Advocates recommends a further penalty of \$500 when customers were de-energized without notice twice, and \$1000 when they did not receive advance notice for all three PSPS events within the scope of this OSC. This reflects the increasing severity of the impacts on customers who were repeatedly de-energized by PG&E without advance notice.

Public Utilities Code §2108 defines offenses “by any corporation or person” as “a separate and distinct offense, and in case of a continuing violation each day’s continuance thereof shall be a separate and distinct offense.” Therefore, the penalty Cal Advocates recommended for the October 9-12, 2019 failure to notify 49 Public Safety Partners would be for four offenses for the sum of \$19,600,000, instead of the \$4,900,000 amount recommended. Similarly, the October 23–25, 2019 event that Cal Advocates counted as one offense involving 96 Public Safety Partners would incur a penalty of \$28,800,000 when counted as three offenses for each account under Public Utils. Code §2108.

To aid the Commission in its determination, Cal Advocates developed three scenarios of penalties, included as Attachment A to this Opening Brief. Alternative A uses only the statutory minimum fine of \$500 per customer per event. Alternative C uses higher penalty amounts than those proposed by Cal Advocates for Medical Baseline Customers and all other customers. Attachment A demonstrates that even at a conservative level, Cal Advocates’ recommendation of a total penalty of \$165,742,000 is very modest.

⁵² Cal Advocates recommends a higher penalty amount when not even PG&E’s website was available during the PSPS events. Website access is not a replacement for the other tools PG&E uses, but at least website service allows at least some way for these vulnerable customers and their friends or family to attempt to assess if they are impacted by PG&E shutting off their power.

2. Customer Count

Cal Advocates determined the number of customers affected by the events in the OSC by using Customer Accounts, which generally refers to meters at a customer premises or location.⁵³ Each Customer Account may group a single person, firm, corporation or a multitude of customers based on which entity pays for the service from PG&E.⁵⁴ Thus, a Customer Account constitutes the most conservative estimate of the number of people affected by the PSPS events in the OSC. Cal Advocates has included the count for the Public Safety Partners that did not receive any notice up until at least one hour prior to de-energization. For all other customer categories, the customer includes the count for those customers that did not receive any notice at all prior to de-energization.

A different metric for determining the total number of people affected by these events would be what PG&E refers to as “Service Point Identification” (SPID).⁵⁵

PG&E explains:

Although not a defined term in PG&E’s Electric Rule No. 1, SPID (or Service Point Identification) is an even more granular view than Account and refers to the individual points of connection at which PG&E provides electric service to the customer.

As noted above, one “Customer” may have several accounts, and one “Account” may cover multiple premises or meters resulting in multiple SPIDs.

For example, Walmart could be listed in PG&E’s system as a single “customer” but have numerous “accounts” (e.g., for each of its stores) and numerous SPIDs for each of its

⁵³ PG&E provided the Customer Accounts in response to Cal Advocates DR. See Exh. Cal Advocates 26, p. 274. PG&E SPID/Account Follow-Up Response - October 9, 2020.

⁵⁴ Exh. Cal Advocates 26, p. 274.

⁵⁵ *Id.*

accounts – for example, one SPID for the parking lot lights and another for the store itself.

For this reason, PG&E’s PSPS notification process is based on SPID rather than Customer, and all of PG&E’s reported data about PSPS notifications – including in its ESRB-8 post-event reports, its Order to Show Cause testimony, and its data responses submitted in the OSC and OII (with one exception) – have been based on SPID rather than Customer.⁵⁶

Cal Advocates did not use SPID to determine the number of Customers affected, as permitted by Public Utilities Code 2108, to balance the issues associated with SPID, such as the difference between a facility and its parking lights.

3. Public Safety Partners

PG&E admits that it did not notify certain Public Safety Partners before it initiated the PSPS events in the OSC.⁵⁷ Some Public Safety Partners did not receive the minimum twenty-four hour notice required by the guidelines D.19-05-042 defined Public Safety Partners as “First responders at the local, state and federal level, water and communication providers, CCAs [Community Choice Aggregators], affected POU’s/electrical cooperatives, the Commission, CalOES and CAL FIRE.”⁵⁸

D.19-05-042 further states that “[p]ublic safety partners will receive priority notification of a de-energization event.”⁵⁹ However, Public Safety Partners did not receive notice much less, “priority notification.” PG&E’s failure to notify certain Public Safety Partners left them unable to identify critical facilities that might be de-energized so as to make alternative plans for those facilities.⁶⁰ For example, PG&E’s responses to

⁵⁶ Exh. Cal Advocates 26, p. 1- (p.276 as attached to Cal Advocates Notice of Availability.)

⁵⁷ PG&E’s Opening Testimony, p.1-5,

⁵⁸ D.19-05-042, Appendix C, p. 6.

⁵⁹ D.19-05-042, Appendix C, p. 6.

⁶⁰ Public Advocates Office Concurrent Rebuttal Testimony, p.10.

Cal Advocates' data requests showed an instance where two hospitals were de-energized in all three October de-energization events.⁶¹

Cal Advocates set the uninformed Public Safety Partners penalty at the maximum amount because of their critical function and the potential safety consequences that failing to notify them poses to all customers. Cal Advocates recommends that the maximum penalty of \$100,000 per PSPS event for Public Safety Partners is reasonable.

4. Medical Baseline Customers

D.19-05-042 defines Medical Baseline customers as those eligible for Medical Baseline tariffs. These tariffs are “designed to assist residential customers who have special energy needs due to qualifying medical conditions.”⁶² Many of these customers require electricity for their life-sustaining machines or to provide mobility. Cal Advocates examined PG&E extensively about these customers,⁶³ but none of PG&E's responses reflected an appreciation of the risk the PSPS events posed to the lives of these customers. PG&E is required to give these customers at least 24 hours' notice. There is no justification for PG&E putting these vulnerable customers at such risk by failing to give them the required notice.

Cal Advocates set the failure to inform Medical Baseline customers penalty at \$65,000 per event because de-energization to a Medical Baseline customer is a potentially life-threatening risk. The failure to inform Medical Baseline customers' penalty for the October 9-12, 2019 de-energization event is set at \$5,000 higher than the other two events because PG&E's website was unavailable or non-functional at this time. PG&E left these Medical Baseline customers with no information as to whether the de-

⁶¹ Exh. Cal. Advocates 04, p.

⁶² D.19-05-042, Appendix C, p. 6.

⁶³ See Exh. Cal Advocates -08.

energization is part of the Public Safety Power Shutoff (PSPS) event or an unexpected blackout of indeterminate duration.

Therefore, Cal Advocates maintains that the record supports penalties against PG&E in the amount of \$65,000 to \$70,000 per Medical Baseline customer per PSPS event.

5. Repeated Failures to Inform Customers

Cal Advocates added an additional penalty of \$500 where PG&E repeatedly failed to notify a customer in advance. The repeated failure to inform customers on any two de-energization events have additional fine amount of \$500 for repeating the violation. For example, if a customer experienced two De-Energization events without notice for both events, this customer is counted on the two separate De-Energization events and counted under this category because PG&E repeated the violation, increasing its severity.

Similarly, the repeated failure to inform customers of the three de-energization events have additional penalty of \$1,000 for repeating the violation for two more times. For example, if a customer experienced three de-energization events without notice for all three events, this customer is counted on the three separate de-energization events and counted under this category because PG&E repeated the violation, increasing its severity.

The failure to inform all other customers fine is set to the minimum fine amount of \$500 per event. The failure to inform all other customers on October 9-12, 2019 de-energization event is set at \$1,000 (\$500 higher than the other two PSPS events because PG&E website was unavailable or non-functional at this time.

D. Remedies

Cal Advocates recommends the Commission apply some of the penalties Cal Advocates recommends as remedies in the manner set forth in Table 2 below. These remedies are designed to benefit the impacted customers in a manner to reduce future impacts of PG&E PSPS events, as well as to more fully compensate the impacted customers who received no notice in advance of PG&E's PSPS events.

Table 2: Public Advocates Office Proposed Shareholder Remedies and Fines

Category	Customer Count	Remedy per Customer	Remedies	Fines	Percentage from Total Fines and Remedies	Description
Public Safety Partners	153	\$100,000	\$15,300,000		9%	\$100,000/Public Safety Partner for power backup investment for electricity resilience.
Medical Baseline	1,513	\$5,000	\$7,565,000		5%	\$5,000/MBL fund electricity resilience.
All Other Customers	60,253	\$400	\$24,101,200		15%	\$400/customer refund above \$100 already given. ⁶⁴
Sectionalization Devices			\$102,201,600		62%	Shareholder funding for sectionalization.
Fine				\$16,574,200	10%	Fine to be paid to the General Fund.
Total			\$149,167,800	\$16,574,200	100%	Total Remedies and Fines is \$165,742,000

Adding sectionalization devices, for instance, can help limit the scope and scale of PG&E PSPS events, making them an appropriate remedy for PG&E shareholders to fund, rather than ratepayers.

⁶⁴ PG&E gave residential customers a \$100 rebate and commercial customers a \$250 rebate.

1. Proposal for Cost Recovery Mechanism

Implementing sectionalization devices normally takes about a year, so the program for installing sectionalization devices should be a capital project. This means that the financial remedy can be treated like a “reverse” capital expenditure.⁶⁵ To implement the financial remedy with respect to sectionalization devices, Cal Advocates recommends the Commission remove an amount equivalent to the proposed fines and remedy (\$102,201,600) from the rate base approved in the Final Decision for the General Rate Case A.18-12-009. As a compliance filing, the Commission should then require PG&E to file an annual tier 1 advice letter explaining how it spends the money on the granular sectionalizing program (MAT 49H).

PG&E proposed this Granular Sectionalizing (MAT 49H) program in A.18-12-009 under the Community Wildfire Safety Program (CWSP) and described it as further sectionalizing distribution circuits by installing additional line reclosers at Tier 2 and Tier 3 HFTD boundaries, in order to limit the duration of and number of customers impacted by outages associated with fire risk reduction activities.

V. CONCLUSION

For the reasons stated above, Cal Advocates respectfully requests that the Commission approve its Notice of Availability and the exhibits identified therein.

⁶⁵ If the program is mostly made up of O&M expenses, then it can be tracked in a memorandum account.

Respectfully submitted,

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ATTACHMENT A

Violation	Reference and Date	Number of Uninformed Customer Accounts	Scenario A violation per unit	Scenario A	Scenario A explanation	Cal Advocates proposed Scenario violation per unit	Cal Advocates proposed Scenario	Cal Advocates proposed Scenario explanation	Scenario C violation per unit	Scenario C	Scenario C explanation
			Total fine	\$87,492,000	Lower range fine	Total fine	\$165,742,000	Middle range fine	Total fine	\$277,508,000	Higher range fine
Public Safety Partners				\$12,700,000	15%		\$15,900,000	9%		\$15,900,000	6%
Uninformed Public Safety Partners on October 9 to 12, 2019 ¹ when PG&E website was unavailable or nonfunctional	Cal Advocates, 024-Q01 (OSC-15) Aug 10, 2020 ²	49	\$100,000	\$4,900,000	Maximum fine due to severity of Public Safety Partners when PG&E website was unavailable or nonfunctional	\$100,000	\$4,900,000	Maximum fine due to severity of Public Safety Partners when PG&E website was unavailable or nonfunctional	\$100,000	\$4,900,000	Maximum fine due to severity of Public Safety Partners when PG&E website was unavailable or nonfunctional
Uninformed Public Safety Partners on October 23 to 25, 2019 ¹		6	\$75,000	\$450,000	150X minimum fine due to severity of Public Safety Partners	\$100,000	\$600,000	Maximum fine due to severity of Public Safety Partners	\$100,000	\$600,000	Maximum fine due to severity of Public Safety Partners
Uninformed Public Safety Partners on October 26 to November 1, 2019 ¹		98	\$75,000	\$7,350,000	150X minimum fine due to severity of Public Safety Partners	\$100,000	\$9,800,000	Maximum fine due to severity of Public Safety Partners	\$100,000	\$9,800,000	Maximum fine due to severity of Public Safety Partners
Medical Baseline				\$25,640,000	29%		\$101,290,000	61%		\$131,550,000	47%
Uninformed MBL customers on October 9 to 12, 2019 when PG&E website was unavailable or nonfunctional	Cal Advocates, 020-Q01 (OSC-11) July 24, 2020	589	\$20,000	\$11,780,000	40X minimum fine due to severity of MBL when PG&E website was unavailable or nonfunctional	\$70,000	\$41,230,000	140X minimum fine due to severity of MBL when PG&E website was unavailable or nonfunctional	\$90,000	\$53,010,000	180X minimum fine due to severity of MBL when PG&E website was unavailable or nonfunctional
Uninformed MBL customers on October 23 to 25, 2019		22	\$15,000	\$330,000	30X minimum fine due to severity of MBL	\$65,000	\$1,430,000	130X minimum fine due to severity of MBL	\$85,000	\$1,870,000	170X minimum fine due to severity of MBL
Uninformed MBL customers on October 26 to November 1, 2019		902	\$15,000	\$13,530,000	30X minimum fine due to severity of MBL	\$65,000	\$58,630,000	130X minimum fine due to severity of MBL	\$85,000	\$76,670,000	170X minimum fine due to severity of MBL
Repeated Uninformed Customers				\$7,639,000	9%		\$7,639,000	5%		\$28,892,000	10%
Repeated uninformed customers on any two De-Energization events ³	Cal Advocates, 029-Q01 (OSC-20) Aug 31, 2020	11,950	\$500	\$5,975,000	Minimum fine due to repetition for one occurrence	\$500	\$5,975,000	Minimum fine due to repetition for one occurrence	\$2,000	\$23,900,000	3X minimum fine due to repetition for one occurrence
Repeated uninformed customers all three De-Energization events ³		1,664	\$1,000	\$1,664,000	2X minimum fine due to repetition for two occurrences	\$1,000	\$1,664,000	2X minimum fine due to repetition for two occurrences	\$3,000	\$4,992,000	6X minimum fine due to repetition for two occurrences
All Other Customers⁴				\$41,513,000	47%		\$41,513,000	25%		\$101,756,000	37%
Uninformed customers on October 9 to 12, 2019 ⁵ when PG&E website was unavailable or nonfunctional	Cal Advocates, 024-Q01 (OSC-15) Aug 10, 2020	22,773	\$1,000	\$22,773,000	2X minimum fine when PG&E website was unavailable or nonfunctional	\$1,000	\$22,773,000	2X minimum fine when PG&E website was unavailable or nonfunctional	\$2,000	\$45,546,000	4X minimum fine when PG&E website was unavailable or nonfunctional
Uninformed customers on October 23 to 25, 2019 ⁵		1,994	\$500	\$997,000	Minimum fine per occurrence	\$500	\$997,000	Minimum fine per occurrence	\$1,500	\$2,991,000	3X minimum fine per occurrence
Uninformed customers on October 26 to November 1, 2019 ⁵		35,486	\$500	\$17,743,000	Minimum fine per occurrence	\$500	\$17,743,000	Minimum fine per occurrence	\$1,500	\$53,229,000	3X minimum fine per occurrence

¹Cal Advocates have the count for the uninformed Public Safety Partners until one hour prior to the De-Energization. PG&E stated that it sends out notifications based on Service Point ID (SPID). Account IDs may have more than one unique SPID linked to the Account ID. Due to that, an Account ID may fall into more than one notification timing category in the tables if the unique SPIDs under the Account ID fall into separate notification timing categories. In this case, PG&E has counted the Account ID once in each timing category.

²PG&E provided a revised count on September 18, 2020 for Public Safety Partners. PG&E updated the numbers because in prior response dated August 10, 2020, PG&E had used an earlier-dated list of Critical Facilities and Public Safety Partners, which was not identical to the May 2020 list. Cal Advocates used the first response numbers because PG&E should have notified them according to the older list of Public Safety Partners.

³PG&E provided these numbers in SPID only.

⁴All other customers include residential, commercial, industrial, agricultural, etc.

⁵PG&E stated that it sends out notifications based on Service Point ID (SPID). Account IDs may have more than one unique SPID linked to the Account ID. Due to that, an Account ID may fall into more than one notification timing category in the tables if the unique SPIDs under the Account ID fall into separate notification timing categories. In this case, PG&E has counted the Account ID once in each timing category.

Category	Customer Count	Remedy per Customer	Remedies	Fines	Percentage from Total Fines and Remedies (Cal Advocates Scenario)	Description
Public Safety Partners	153	\$100,000	\$15,300,000		9%	\$100,000/Public Safety Partner for power backup investment for electricity resilience
Uninformed Public Safety Partners on <u>October 9 to 12, 2019</u> when PG&E website was unavailable or nonfunctional	49					
Uninformed Public Safety Partners on <u>October 23 to 25, 2019*</u>	6					
Uninformed Public Safety Partners on <u>October 26 to November 1, 2019</u>	98					
Medical Baseline (MBL)	1,513	\$5,000	\$7,565,000		5%	\$5,000/MBL fund electricity resilience
Uninformed MBL customers on <u>October 9 to 12, 2019</u> when PG&E website was unavailable or nonfunctional	589					
Uninformed MBL customers on <u>October 23 to 25, 2019</u>	22					
Uninformed MBL customers on <u>October 26 to November 1, 2019</u>	902					
All Other Customers	60,253	\$400	\$24,101,200		15%	\$400/customer refund above \$100 already given
Uninformed customers on <u>October 9 to 12, 2019</u> when PG&E website was unavailable or nonfunctional	22,773					
Uninformed customers on <u>October 23 to 25, 2019</u>	1,994					
Uninformed customers on <u>October 26 to November 1, 2019</u>	35,486					
Sectionalization Devices			\$102,201,600		62%	Shareholder funding for sectionalization
Fine				\$16,574,200	10%	Fine to be paid to the General Fund
Total			\$149,167,800	\$16,574,200	100%	Total Remedies and Fines is \$165,742,000